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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1908/2009

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	X. (represented by counsel, Jong Chul Kim)
Alleged victim:	The author
State party:	Republic of Korea
Date of communication:	19 October 2009 (initial submission)
Document references:	Special Rapporteur's decision under rules 92 and 97, transmitted to the State party on 21 October 2009 (not issued in document form)
Date of adoption of Views:	25 March 2014
Subject matter:	Deportation of a Christian convert to the Islamic Republic of Iran
Procedural issues:	Exhaustion of domestic remedies; insufficient substantiation
Substantive issues:	Risk of torture and other cruel, inhuman or degrading treatment or punishment upon return to country of origin; arbitrary detention
Articles of the Covenant:	7; 9 (para. 4)
Articles of the Optional Protocol:	2; 5 (para. 2 (b))

* Reissued for technical reasons on 24 June 2014.

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 1908/2009*

Submitted by:	X. (represented by counsel, Jong Chul Kim)
Alleged victim:	The author
State party:	Republic of Korea
Date of communication:	19 October 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 March 2014,

Having concluded its consideration of communication No. 1908/2009, submitted to the Human Rights Committee by X. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is X., an Iranian national born in 1965, held at the time of submission in the Hwaseong detention centre for foreigners, awaiting deportation to the Islamic Republic of Iran. He claims that his rights under article 7 of the Covenant would be violated if he were to be deported to the Islamic Republic of Iran. He further claims that the State party breached article 9 of the Covenant in his regard. The author is represented.

1.2 On 21 October 2009, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided to issue a request for interim measures under rule 92 of the Committee's rules of procedure, requesting the authorities of the State party to refrain from deporting the author while his case is under consideration before the Committee, and to guarantee the regular judicial review of his administrative detention. The Committee's request was granted.

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Walter Kälin, Mr. Yuji Iwasawa, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Ms. Margo Waterval and Mr. Andrei Paul Zlatescu.

The facts as presented by the author

2.1 The author was born a Muslim in the Islamic Republic of Iran. His interest in Christianity grew when he started listening to an international Christian radio programme called *Voice of Hope*. The author came to the Republic of Korea on 30 May 2005 with a "C-2" short-term business visa, valid for three months. While there, he started attending Kurdish services at Shin-Kwang Church, where he developed a Christian faith, studied the Bible and converted to Christianity. On 4 November 2005, he was arrested by prosecutors on a charge of cannabis consumption, and the court sentenced him to 10 months of imprisonment,[1] with a two-year suspension of the sentence.

2.2 Subsequent to his sentence, a deportation order was adopted against the author,[2] and he was placed in detention in the Hwaseong detention centre on 12 December 2005. The grounds for his detention were not related to his criminal sentence, but to the execution of the deportation order issued against him, based on article 46 of the Immigration Control Act. According to article 63 of the Act, if it is impossible to immediately repatriate an individual who is subject to an order for his or her deportation from the Republic of Korea, the person may be placed in detention in a foreigner internment room or camp or another place designated by the Minister of Justice until the repatriation is possible.

2.3 While detained in the detention centre for foreigners in Hwaseong, the author applied for refugee status, on 28 December 2005. The Ministry of Justice rejected his application on 10 March 2006, on the ground that the author did not establish a "well-founded fear of being persecuted" under article 1 of the 1951 Convention relating to the Status of Refugees. On 23 June 2006, the Ministry of Justice rejected his appeal, finding that the initial decision was "justified". According to the author, the Ministry of Justice intentionally deleted, in the text of the decision, the last sentence providing that the author could file an administrative appeal against the decision within 90 days of his notification of the decision. Accordingly, the author did not appeal the decision within the statutory deadline.

2.4 During his continuing detention, the author further developed his Christian faith, and members of the Shin-Kwang Church visited him periodically. On 10 July 2006, he decided to make his Christian faith public by being baptized.

2.5 On 13 October 2006, when the author could no longer challenge the rejection of his asylum by the Ministry of Justice, the Immigration Office invited an official from the Iranian Embassy to visit the author and to issue a new passport so as to allow his repatriation. During the interview with the official from the Iranian embassy, the author stated that he had converted to Christianity and that he had no intention to return to the Islamic Republic of Iran, when asked to reconvert to the Muslim faith.

2.6 On 20 February 2007, the author submitted a new application for refugee status, which was rejected on 20 April 2007 on the grounds that: his statements were untrustworthy and contradicted by the minister who baptized him, specifically with respect to the reason why the author sought to be baptized after his first asylum application was denied; the Iranian diplomat did not comment on the author's conversion, which suggests that the Iranian Embassy does not recognize that conversion; and only persons involved in active religious missions are at risk of persecution in the Islamic Republic of Iran. The author, who is not involved in missionary work, would be able to live his ordinary religious life in the Islamic Republic of Iran, including going to Sunday service, without risk.

[1] No date provided.

[2] The deportation order is dated 12 December 2005, but does not state a date of deportation.

2.7 On 25 May 2007, the author's appeal was rejected. On 3 July 2007, the author filed a further administrative appeal, in which he submitted evidence showing that Iranians who had converted to Christianity would be persecuted on return to the Islamic Republic of Iran. The author submitted a document dated 9 October 2007, prepared by the Office of the United Nations High Commissioner for Refugees in Seoul at the request of the Presiding Judge of the Seoul Administrative Court. That document indicates that "according to the sources, a governmental agency, the United Nations and a non-governmental organisation, Muslims who convert to Christianity may suffer in the Islamic Republic of Iran from societal discrimination and, in some instances, persecution, especially if they engage in proselytizing". In his application, the author also relied on the fact that the Iranian Embassy knew that he had converted to Christianity, through the embassy official who had visited him. He also submitted his personal diary as evidence of the genuine nature of his conversion to Christianity.

2.8 The author's administrative appeal was rejected on 22 January 2008, principally on the following grounds: his entry into the Republic of Korea seemed to be based on economic reasons; he was baptized after his initial refugee status application was rejected; it is difficult to accept, based only on the author's statement that he informed the Iranian embassy official about his conversion, that the Iranian authorities are aware of the conversion; and, despite the fact that conversion to Christianity is the subject of government oppression and discrimination in education and economic activities in the Islamic Republic of Iran, simple conversion rarely leads to criminal prosecution, unless a person is actively engaged in proselytizing Christianity to the public. Therefore, the author failed to show a well-founded fear that he would be persecuted on return to the Islamic Republic of Iran. The author appealed that decision before the Seoul High Court, but his claim was rejected on 11 November 2008. He lodged a further appeal before the Supreme Court, which was rejected on 26 February 2009. The author claims that he has exhausted domestic remedies.

2.9 On 31 March 2009, the author received the visit of another official from the Iranian Embassy in Seoul, who tried to persuade him to reconvert to Islam.

2.10 Regarding the exhaustion of domestic remedies, the author submits that, as far as his asylum proceedings are concerned, his last appeal was considered by the Supreme Court, which rejected it on 26 February 2009. Consequently, he claims that no further recourse to appeal is available to him. The author further observes that a procedure for filing an objection against the Ministry of Justice, under article 60 of the Immigration Control Act, would potentially have been available if he had availed himself of the procedure within seven days after the notification of the order. Similarly, a procedure for revocation litigation on the deportation order, under article 20 of the Administrative Litigation Act, would potentially have been open to the author. However, he missed the statutory deadlines to file such an appeal, which is 90 days after the notification of the deportation order. Consequently, he submits that neither of those two avenues were available to him.

2.11 The author further submits that a declaratory action for the affirmation of nullity of the deportation order was in principle available to him, but it is not effective. That procedure does not provide for a time limit, unlike that of the revocation litigation. Nonetheless, the constant jurisprudence of administrative courts shows that only orders with significant and objectively clear defects at the moment of their issuance may be annulled. The deportation order was issued under article 46 of the Immigration Control Act, when the Ministry of Justice was not aware of the author's conversion to Christianity. Therefore, the procedure would not have been effective since the deportation order did not have significant and objectively clear defects at the time of its issuance.

2.12 With respect to his detention, the author submits that the procedures on revocation litigation or objection to the Ministry of Justice were not available, as he missed the statutory deadlines while pursuing his asylum procedure. As to the procedure of declaratory action for

the affirmation of nullity of the detention order, the detention order issued on 12 December 2005 was adopted pursuant to article 63 of the Immigration Control Act. The author contends that his detention was not arbitrary from the beginning of his initial detention, but became arbitrary over time, as it was not subjected to periodic judicial review. As his detention is linked to the enforcement of the deportation order, a declaratory action for the affirmation of nullity of the detention order would only have been successful if the deportation order itself was found to be invalid, through a procedure which the author described as ineffective. Also, the detention order itself, when adopted, did not have significant and objectively clear defects. Consequently, this procedure would not be effective.

The complaint

3.1 The author claims that the State party would breach article 7 of the Covenant should it deport him, as the Iranian authorities are aware of his conversion, and will subject him to torture, or even to a death sentence,[3] as the Iranian Penal Code was amended in 2008 to impose the death penalty on any Iranian male who abandons the Islamic faith.[4]

3.2 The author further stresses that he has been detained at the Hwaseong detention centre since 12 December 2005. His detention will be indefinite as long as the deportation order is neither revoked nor withdrawn, since article 63 of the Immigration Control Act provides that "if it is impossible to immediately repatriate a person who is subject to a deportation order, out of the Republic of Korea" the person may be detained "until the repatriation is possible". Since 27 February 2009 (when the final decision of the Supreme Court on his refugee case was adopted), the author has been in detention without judicial review, pending the execution of the deportation order against him.[5] Consequently, he submits that the State party has breached article 9 in his regard.

State party's observations on admissibility

4.1 On 11 January 2010, the State party submitted observations on the admissibility of the communication. It contends that the author has failed to exhaust domestic remedies to challenge both the deportation order and the legality of his administrative detention. With respect to the deportation order, the author was entitled, under article 60 of the Immigration and Control Act, to file an objection against the Minister of Justice within seven days of receipt of the order. It was also open to the author to file an administrative litigation under the Administrative Litigation Act, seeking the revocation of the deportation order, within 90 days of the receipt of its notification.

4.2 The State party further submits that under article 64(2)(iv) of the Immigration Control Act, the author may request to be deported to another country, other than the Islamic Republic of Iran. As the author has agreed to avail himself of that procedure, the State party allowed him sufficient time to undertake consultations with a third country. The author is currently in consultations with a third country regarding his possible deportation to that country.[6]

4.3 With respect to the author's allegations of arbitrary detention, the State party recalls that the author was detained pursuant to article 63 (1) of the Immigration Control Act and

[3] The author does not explicitly refer to article 6 of the Covenant.

[4] The author refers to the following reports: Country of Origin Research and Information, "Status of Christian converts that do not try to proselytize or those who are not active pastors in Iran" (24 November 2008), and United States Commission on International Religious Freedom, *Annual Report 2009*, pp. 32–38.

[5] This was at the time of submission of his communication before the Committee. The author was thereafter temporarily released. See the State party's observations on admissibility (para. 4.3).

[6] The country in question is Turkey. See para. 5.4.

article 78 (1) of the Enforcement Decree of the Act, which provide that an individual may be placed in the custody of a foreigner protection office, a foreigner detention centre, or any other place designated by the Minister of Justice, upon the issuance of a deportation order, if the individual cannot be deported promptly. A deportation order was issued on 12 December 2005 with respect to the author. At that time the author was placed in the custody of the Hwaseong detention centre, where he remained until he was temporarily released on 20 November 2009.

4.4 The State party submits that within 90 days upon being notified of the deportation order of 12 December 2005, the author could have filed an administrative litigation seeking the revocation of the order. In addition, the author may also have filed an objection to his custody against the Minister of Justice at any time during his custody, based on article 55 of the Immigration Control Act. Had the objection been dismissed, he could have filed an administrative litigation seeking the revocation of such negative decision within 90 days of receiving notice of the negative decision. The author filed an objection to challenge his custody on 18 August 2009. The objection was dismissed on 3 November 2009, but the author did not file an administrative litigation to challenge the decision.

4.5 The State party further notes that under article 65 of the Immigration Control Act, any person in custody before the execution of a deportation order may also seek from the Government a temporary release. If the request is dismissed, an administrative litigation under the Administrative Litigation Act, seeking the revocation of the decision, may be filed within 90 days of the receipt of the notice of the decision. In the present case, the author's request of 20 November 2009 for temporary release was accepted by the head of the Seoul Immigration Office, and the author remains on temporary release from custody.

4.6 The State party therefore maintains that the author was given the opportunity to have the legality of his detention reviewed judicially, and continues to have the opportunity to challenge the negative decision of 3 November 2009. Consequently, he has failed to exhaust domestic remedies.

Author's comments on the State party's observations on admissibility

5.1 On 20 April 2010, the author responded to the State party's observations. He submits that the procedures under the Immigration Control Act and under the Administrative Litigation Act referred to by the State party to challenge his deportation order are not available, as they must be filed within 7 and 90 days of the notice of the deportation order, respectively. Since the order was adopted on 12 December 2005, neither of those procedures is now available to the author.

5.2 With respect to the objection and the administrative litigation against the Minister of Justice, neither is an effective remedy, because the reasons for which the deportation would constitute a violation of the principle of non-refoulement materialized after the author was baptized, that is, after 10 July 2006. Therefore, when those remedies were available, the deportation order would not have been revoked because it had been decided that the author would be deported because of his conviction for drug use. After he was baptized and thus feared that he would be tortured upon return to the Islamic Republic of Iran, those remedies were no longer available.

5.3 Regarding the revocation of the deportation order itself, this would not have offered the author a stable status in the State party, as he may have been subjected to de facto refoulement. The only effective protection he could seek was via the asylum proceedings, which he pursued. Not a single asylum seeker in the State party has filed an objection/litigation for revocation of a deportation order, as it is not an effective remedy.

5.4 With respect to ongoing consultations with third countries, the author submits that those are indefinite consultations, devoid of legal binding force. Also, the author insisted on

being deported to a non-Muslim country, but the State party continued to suggest Turkey as a third-country alternative. According to the author, Turkey has engaged in detention and forcible returns of refugees to the Islamic Republic of Iran.[7] Therefore, the author concludes that consultations with third countries are not an available or effective remedy which he should be asked to exhaust.

5.5 As for the State party's arguments on the remedies available to challenge his detention, the author stresses that it was neither necessary nor efficient for him to file an administrative litigation within 90 days of the detention order as, at the time, his detention was not arbitrary. It only became so after two to three years without periodic judicial review. At that point, the above-mentioned remedy was no longer available to him.

5.6 As for his action before the Ministry of Justice, filed on 23 August 2009,[8] to challenge his custody, the author submits that the procedure was unduly prolonged, as the Ministry had still not decided on his application when he filed his communication before the Committee on 19 October 2009.[9] In addition, the author did not receive notification of the negative decision of 3 November 2009 referred to by the State party.

5.7 Finally, the author submits that his temporary release does not change his allegations, as he could be detained solely upon the State party's wishes.

State party's observations on the merits

6.1 On 21 April 2010, the State party submitted observations on the merits of the communication. It reiterates that consultations with a third country are ongoing for the deportation of the author, and that it is, in the meantime, withholding the enforcement of the deportation order against the author until a decision is reached. Consequently, the author's fear that he will be subjected to torture or ill-treatment is not justified.

6.2 The State party further submits that even if the author was deported to the Islamic Republic of Iran, he would not be exposed to torture or to cruel, inhumane or degrading treatment or punishment. On 22 January 2008, the Seoul Administrative Court found that there was a lack of sufficient grounds to support the author's claim that he would be persecuted if repatriated to the Islamic Republic of Iran. On 26 February 2009, the Supreme Court confirmed that conclusion, based on the following factors: the author was not involved in Christianity-related activities in the Islamic Republic of Iran, and he had entered the Republic of Korea for economic purposes; he was baptized following the first denial of his refugee application; it is unlikely that the Islamic Republic of Iran is aware of his conversion to Christianity; it is uncommon that religious conversion itself leads to penal persecution in the Islamic Republic of Iran, unless the person actively engages in proselytism; and the existence of discrimination in educational and economic activities does not amount to persecution. Accordingly, the State party reiterates that there is no danger faced by the author in case of return to the Islamic Republic of Iran.

6.3 With respect to the author's claim under article 9 that he was arbitrarily detained, the State party reiterates that the author failed to exhaust domestic remedies. After being detained on 12 December 2005, it was not until 18 August 2009 that he filed an

[7] The author refers, inter alia, to the European Court of Human Rights decision in *Keshmiri* v. *Turkey*, application No. 36370/08, 13 April 2010.

[8] The State party states that this appeal was filed on 18 August 2009 (see para. 4.4).

[9] The author notes that article 55(2) of the Immigration Control Act provides that "the Minister of Justice, upon receiving an objection under paragraph 1, shall examine *without delay* [emphasis added] the relevant documents. If the request is groundless, he shall reject it by decision, and if he deems it well-grounded, he shall order by decision the foreigner released from the internment [detention]."

administrative objection against his custody. After his application was rejected, he failed to appeal the decision.

6.4 The State party further observes that the author alleges that he could not file an administrative litigation because the period for filing such application against his custody had elapsed. However, the asylum procedure and the administrative procedure regarding custody are distinct procedures, and the author could have challenged the legality of his detention irrespective of the process of his asylum claim. During the legal proceedings, the author was represented by legal counsel, which leads the State party to infer that he knowingly decided not to appeal the initial decision on the legality of his detention.

6.5 In conclusion, the State party reiterates that it is not enforcing the deportation order against the author as long as consultations on his possible deportation to a third country are ongoing.

Author's comments on the State party's observations on the merits

7.1 On 14 July 2010, the author reiterated that consultations on his possible deportation to a third country are not a legally binding process, and as such do not exclude a possible deportation of the author by the State party to the Islamic Republic of Iran. He adds that such consultations carry the inevitable risk of a prolonged detention, as there are no deadlines attached to that process under the Immigration Control Act.

7.2 Regarding the appeal procedures referred to by the State party, the author notes that an administrative litigation against a custody order within 90 days of the notice of the order is only for the determination of whether the initial custody was legitimate, and would not address the question as to whether a prolongation of the detention is justified. He adds that even if he had filed an administrative litigation within 90 days after the rejection of his objection by the Minister of Justice, this would not be an appropriate judicial measure, as he has been detained for a prolonged period, and there is no limited time frame in which the Minister of Justice must decide on appeals.

7.3 As to his temporary release, the author notes that it was granted after he filed his communication with the Committee. To extend the temporary release, he must go to the Immigration Office on a regular basis. Additionally, the Immigration Office has full discretion to revoke the decision of temporary release, or to refuse to extend it. The author could therefore be placed back in detention.

7.4 With respect to the risk incurred in case of deportation to the Islamic Republic of Iran, the author refers to the opinion of the Office of the United Nations High Commissioner for Refugees (see para. 2.7 above) and stresses that limitations on his right to proselytize would constitute an unreasonable limitation on his right to freedom of religion.

Additional submission from the author

8.1 On 5 February 2014, the author recalled that he had been released on 20 November 2009, after 47 months of detention. He stresses that during his detention, his health condition significantly deteriorated. He lost most of his teeth, and attempted to commit suicide. The fact that there are neither mental health care services, nor a dental clinic in the foreigners' detention facility where he was held only worsened the situation. The author adds that, since then, he has been unable to live without medication.[10]

[10] The author annexes a medical certificate dated 2 December 2013. The author visited the clinic on 2 September 2013 due to sleep disorder, anxiety, depression and sensitivity. The certificate provides that medical tests showed "signs of extreme stress", and that the author was prescribed antidepressant and

8.2 The author recalls that he was released on 20 November 2009 with a surety of US$ 3,000. He then regularly extended his release every three months, by reporting in person to the immigration authorities. He stresses that his cooperation and voluntary reporting is evidence that, if he had been released rather than being kept in indefinite detention, he would not have absconded. Therefore, he reiterates his previous submission that because it was not regularly subjected to regular review, his detention was arbitrary.

8.3 In addition, the author claims that his surety of $3,000 was confiscated when he appeared before the immigration authorities on 13 December 2013 to apply for a further extension of his release, which was denied, on the ground of his failure to comply with the authorities' request to recover his lost passport from the Iranian authorities. He was accordingly re-detained on 30 December 2013, and temporarily released after paying another surety of $3,000.[11] The author submits that since the denial of the extension of his release on 13 December 2013, his health condition has worsened.

8.4 The author further submits that he has been studying theology and working for his church as a Bible teacher since his temporary release. In 2012, he received a bachelor's degree in theology from the Antioch Missions International College and Seminary.

Additional submission from the State party

9.1 On 13 February 2014, the State party submitted an update on the author's situation. It recalled that the Government allowed the author to stay in the country and withheld the execution of the deportation order, as requested by the Committee in 2009. After his release from detention on 20 November 2009, the author regularly applied for extensions of his temporary release.

9.2 The State party also recalls that when the Supreme Court finally denied the author's application for refugee status in 2009, the Seoul Immigration Office informed the author that he could depart to a third country instead of the Islamic Republic of Iran. Accordingly, the author was granted sufficient time to carry out consultations with a third country. The State party did not refer to any specific country.

9.3 The author has continued his studies at a seminary for foreigners in the Republic of Korea, and will graduate in March 2014. The president of the seminary attended by the author has pledged to support the latter in leaving the Republic of Korea for Canada after graduation, and the author also formally notified the Seoul Immigration Office of his intention to depart to a third country.[12] Based on those pledges, the Immigration Office allowed the author to be released and to complete his studies, deferring the execution of the deportation order.

9.4 The State party recalls that the author was proved guilty in the Republic of Korea as a drug offender, and that his asylum application was dismissed after a thorough consideration of his claims by the Ministry of Justice and the Supreme Court, which found that the author was not entitled to protection based on the principle of non-refoulement.

9.5 The State party expresses concern over the consequences of the author's situation on the Government's lawful exercise of immigration control, given that although the author's legal status has been left undetermined since 2009, he has been able to pursue studies and

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anti-anxiety treatment, as well as psychiatric sessions to be held every two weeks. The certificate also states that the patient requires mental stability and support, and that if he is exposed to continuous stress, his symptoms are likely to increase. The author was further diagnosed with other stress-related symptoms, such as duodenal ulcer, numbness of hands and feet, migraine and muscle cramps.

[11] No date provided.

[12] The State party annexes a report from the Ministry of Justice dated 11 May 2012 concerning the author's application for an extension of his release.

remain on the State party's territory pursuant to the Committee's request for interim measures, despite the fact that he was denied refugee status four years ago. Therefore, the Government of the State party requests a swift decision by the Committee, based on the previous observations submitted and the author's present situation.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

10.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

10.3 The Committee takes note of the author's claim that his detention is in violation of article 9, as he has been detained since 12 December 2005, and there has been no periodic judicial review of such detention for almost four years. The Committee recalls that detention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances, and reassessed as it extends in time.[17] The Committee notes that in the present case, the author was detained pursuant to article 63(1) of the Immigration Control Act, which provides that an individual against whom a deportation order was adopted may be placed in custody if that individual cannot be repatriated promptly. The Committee further notes the State party's argument that although he had the opportunity to do so, the author did not challenge his detention until 18 August 2009. The Committee observes that the author was represented by a legal counsel during the proceedings, and that he has not contested the fact that he could have challenged his detention earlier. The author also failed to appeal the negative decision of 3 November 2009 regarding his administrative objection to his detention. The Committee accordingly considers that the author has not exhausted domestic remedies, and concludes that this part of the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

10.4 With respect to the author's potential deportation to the Islamic Republic of Iran, the Committee notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies, given the author's failure to file an administrative litigation under the Administrative Litigation Act, seeking the revocation of the deportation order, within 90 days of the receipt of its notification. It also notes the author's claim that this procedure was not effective *ratione temporis*, as the gist of his complaint, that is, the risk faced as a result of his conversion to Christianity, had not materialized during the statutory availability of this remedy, since he was baptized on 10 July 2006, and that he should have filed such appeal by March 2006. The Committee further notes that, after his conversion, the author applied for refugee status on 20 February 2007. His application was denied, on the ground that he lacked credibility and would not face persecution upon return to the Islamic Republic of Iran. The author filed several consecutive appeals, until the Supreme Court ultimately rejected his appeal on 26 February 2009. The author claims that he has no further remedy to challenge the deportation order adopted against him, and the State party has not contested this.

[17] Communication No. 560/1993, *A. v. Australia*, Views adopted on 3 April 1997, paras. 9.3–9.4.

10.5 The Committee takes note of the State party's argument that consultations on the author's settlement in a third country are ongoing, and that the latter voluntarily chose to avail himself of that procedure. The Committee further notes that a country of resettlement was suggested to the author, who was not prepared to engage in such process; and that the State party is not enforcing his deportation to the Islamic Republic of Iran pending the final outcome of the consultations. The Committee has taken note of the author's argument that such consultations are indefinite and lack legal force. The Committee observes that this procedure appears to be discretionary, is not time bound, and does not appear to have formal suspensive effect with respect to the removal. The Committee recalls its jurisprudence to the effect that authors must avail themselves of all judicial remedies in order to fulfil the requirement of article 5, paragraph 2 (b), of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.[14] In the circumstances, the Committee considers that the consultations on the author's resettlement to a third country do not constitute a remedy that the author is required to exhaust under article 5, paragraph 2 (b), of the Optional Protocol.

10.6 The Committee declares the communication admissible insofar as it appears to raise issues under articles 6 and 7 of the Covenant, and proceeds to their consideration on the merits.

Consideration of merits

11.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

11.2 The Committee notes the author's claim that as he has converted to Christianity and that since the Iranian authorities are aware of that fact, he faces a real risk of being subjected to treatment contrary to article 7 of the Covenant if he were to be forcibly returned to the Islamic Republic of Iran. The author also alleged that he may be sentenced to death in the Islamic Republic of Iran, as the Penal Code imposes the death penalty on any man who has left the Islamic faith (see para. 3.1 above). The Committee took note of the State party's contention that the author's applications before domestic authorities were rejected on the ground that the author lacked credibility, a conclusion reached following, inter alia, his conversion to Christianity after his first asylum application was rejected.

11.3 The Committee recalls that, generally speaking, it is for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such risk of irreparable harm exists. Notwithstanding the deference to be given to the immigration authorities in assessing the evidence before them, the Committee must determine whether the author's removal to the Islamic Republic of Iran would expose him to a real risk of irreparable harm. In this context, the Committee recalls its general comment No. 31 (2004), in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.[15]

11.4 The Committee must therefore determine whether the author's removal to the Islamic Republic of Iran would expose him to a real risk of irreparable harm under article 6,

[14] See communications No. 1003/2001, *P.L. v. Germany*, decision of inadmissibility adopted on 22 October 2003, para. 6.5; and No. 433/1990, *A.P.A. v. Spain*, decision of inadmissibility adopted on 25 March 1994, para. 6.2.

[15] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III, para. 12.

paragraph 1, and article 7 of the Covenant. The Committee observes that it is uncontested that the author converted to Christianity; and that he was visited during his detention by Iranian officials, whom he informed of his conversion. In that regard, the Committee took note of reports that indicate that although apostasy is not codified as a crime under Iranian law, it may be treated as such by prosecutors and judges to charge religious converts with apostasy, which has reportedly led to a number of arbitrary arrests,[16] imprisonment in solitary confinement, torture, convictions and even executions.

11.5 The Committee further notes that the author has obtained a bachelor's degree in theology from the Antioch Missions International College and Seminary, which is run by Antioch Missions "to spread the Gospel effectively to the unreached people groups" in Northern Africa, the Middle East and Asia.[17] The Committee takes note of the uncontested opinion, shared by the State party (para. 6.2 above), that in the Islamic Republic of Iran, Christians engaged in proselytizing are exposed to serious risks of persecution, as well as penal consequences. The Committee notes that this aspect has not been examined in the course of deportation proceedings. Thus, the State party has failed to give due consideration to the personal risk faced by the author in the Islamic Republic of Iran not only as a Christian convert, but also as a theologian with a conspicuous evangelist profile. Accordingly, the Committee is of the view that the author would be exposed to a real risk of irreparable harm under article 6, paragraph 1, and article 7 of the Covenant if he were forcibly returned to the Islamic Republic of Iran.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's removal to the Islamic Republic of Iran would violate his rights under articles 6, paragraph 1, and article 7 of the Covenant.

13. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a full reconsideration of his claim regarding the risk of treatment contrary to articles 6, paragraph 1, and article 7 of the Covenant should he be returned to the Islamic Republic of Iran, taking into account the obligations of the State Party under the Covenant. Furthermore, the State party should not deport the author to any third country likely to deport him to the Islamic Republic of Iran. The State party is also under an obligation to take steps to prevent similar violations in the future.

14. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[16] Concluding observations of the Human Rights Committee on the Islamic Republic of Iran (CCPR/C/IRN/CO/3), para. 23.

[17] http://amicenter.net/en/acs/.